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Supreme Court of the United States

October Term, 1975
No. 75-76

STATE OF SOUTH DAKOTA,

Petitioner,

vs.

DONALD OPPERMAN,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of South Dakota.

Brief of Amicus Curiae State of California in Support of Petitioner.

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SUBJECT INDEX

Page

Interest of Amicus Curiae 1

Argument 3

The Standard Police Inventory of the Contents of Respondent's Lawfully Impounded Automobile Was Not an Unreasonable Search Because the Need for the Inventory Procedure Outbalanced the Gravity of the Invasion 3

A. The Well Recognized Need to Conduct Inventories of the Contents of Impounded Automobiles Is a Reasonable and Necessary Police Procedure 4

B. The Invasive Character of an Inventory Search of an Impounded Motor Vehicle Is Minimal in Nature Because of the Lesser Expectation of Privacy and the Benign Nature of the Search 10

Conclusion 21

TABLE OF AUTHORITIES CITED

Cases	Page
Alderman v. United States, 394 U.S. 165 (1969)	12
Berger v. New York, 388 U.S. 41 (1967)	10, 11
Cabbler v. Commonwealth, 212 Va. 520, 184 S.E. 2d 781 (1971)	4
Cady v. Dombrowski, 413 U.S. 433 (1973)	13, 14, 17, 18
Camara v. Municipal Court, 387 U.S. 523 (1969)	3
Cardwell v. Lewis, 417 U.S. 583	13, 15
City of St. Paul v. Myles, 298 Minn. 298, 218 N.W. 2d 697 (1974)	4, 5, 8, 16, 19
Cooper v. California, 386 U.S. 58 (1967)	9, 10, 14
Cupp v. Murphy, 412 U.S. 291 (1972)	8
Godbee v. State, 224 So. 2d 441 (Fla. App. 1969)	4, 19
Heffley v. State, 83 Nev. 100, 423 P. 2d 666 (1967)	4, 16
Katz v. United States, 389 U.S. 347 (1967)	10, 11, 15
Ker v. California, 374 U.S. 23 (1963)	4
Lopez v. United States, 373 U.S. 427 (1963)	11
Mozzetti v. Superior Court, 4 Cal. 3d 699, 484 P. 2d 84 (1971)	2, 6, 7, 8
Opperman v. State, 228 N.W. 2d 152 (1975)	6, 7, 8, 20
Oregon v. Hass, ... U.S. ....., 95 S. Ct. 1215 (1975)	2
People v. Krivda, 5 Cal.3d 357, 486 P. 2d 1262 (1971)	13

Cases	Page
People v. Sullivan, 29 N.Y. 2d 69, 323 N.Y.S. 2d 945, 272 N.E. 2d 464 (1971), reversing, 35 A.D. 2d 690, 315 N.Y.S. 2d 274 (1970)	3, 4, 16, 17, 19
People v. Trusty, ... Col. ....., 516 P. 2d 123 (1973)	4
People v. Willis, 46 Mich. App. 436, 208 N.W. 2d 204 (1973)	4, 5
Pigford v. United States, 273 A. 2d 837 (1971)	20
Preston v. United States, 376 U.S. 364 (1964)	3, 7
St. Clair v. State, 11 Md. App. 605, 232 A. 2d 565 (1967)	4, 9, 19
Silverman v. United States, 365 U.S. 505 (1961)	11
State v. Achter, ... Mo. ....., 512 S.W. 2d 894 (1974)	4
State v. Criscola, 21 Utah 2d 272, 444 P. 2d 517 (1968)	4
State v. Montague, 73 Wash. 2d 381, 438 P. 2d 571 (1968)	4, 16, 19
State v. Raiford, 7 Or. App. 302, 490 P. 2d 1036 (1971)	4
State v. Wallen, 185 Neb. 44, 173 N.W. 2d 372 (1970)	4, 19
Terry v. Ohio, 393 U.S. 1 (1968)	12
United States v. Edwards, 441 F. 2d 749 (5th Cir. 1971)	3
United States v. Fuller, 277 F. Supp. 97 (Dist. Ct. Dist. of Columbia 1967)	19
United States v. Fuller, 433 F. 2d 533 (D.C. Cir. 1970)	5

Page

United States v. Gerlach, 350 F. Supp. 180 (E.D. Mich. 1972) 19

United States v. Pennington, 441 F. 2d 249 (5th Cir. 1971), cert. denied 404 U.S. 854 (1971) 5

United States v. Sifuentes, 504 F. 2d 845 (4th Cir. 1974) 5

Warrix v. State, 50 Wis. 2d 368, 184 N.W. 2d 189 (1971) 4

Rules

Rules of the Supreme Court of the United States, Rule 42(4) 1

Statute

United States Constitution, Fourth Amendment 2, 3, 4, 11, 12, 15

Textbooks

Note, From Private Places to Personal Privacy: A Post-Katz Study of Fourth Amendment Protection, 43 N.Y.U. L. Review, pp. 968, 983-84 (1968) 12, 15

Note, "Warrantless Searches and Seizures of Automobiles," 87 Harv. L. Rev., pp. 835, 850, 851 (1974) 18

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Interest of Amicus Curiae.

The State of California through its Attorney General presents this brief as *amicus curiae* in support of petitioner pursuant to Rule 42(4) of the Rules of this Court. Petitioner is seeking to establish that a standard police inventory of the contents of a lawfully impounded automobile does not violate the Fourth Amendment of the United States Constitution. Since more motor vehicles are licensed in California than in any other state, California is deeply concerned that its law enforcement officers be allowed to inventory the contents of automobiles which they are required by law to impound: only through the inventory pro-

cedure may law officers protect themselves both from civil liability and from dangerous instrumentalities which may be contained in such vehicles. Although the California Supreme Court has held such inventory inspections to be violative of the Fourth Amendment in *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 94 Cal. Rptr. 412, 484 P. 2d 84 (1971), the *Mozzetti* opinion is based entirely upon that Court's interpretation of the federal Constitution. Consequently, a decision by this Court construing the Constitution to allow such inventories would be authoritative in California. *See Oregon v. Hass,* ..... U.S. ....., 95 S. Ct. 1215, 1219 (1975).

ARGUMENT.

The Standard Police Inventory of the Contents of Respondent's Lawfully Impounded Automobile Was Not an Unreasonable Search Because the Need for the Inventory Procedure Outbalanced the Gravity of the Invasion.

The Fourth Amendment proscription of unreasonable searches and seizures applies to automobiles, and the standard with regard to automobiles is whether the search was reasonable under all the circumstances. *Preston v. United States,* 376 U.S. 364, 367 (1964). In assessing the elusive question of the reasonableness of a search,[1] this Court has formulated a "balancing test" to determine whether a search is reasonable under Fourth Amendment standards:

> ". . . [T]here can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." *Camara v. Municipal Court,* 387 U.S. 523, 537 (1969).

When this test is applied to the "search" conducted in the instant case—a standard police inventory of the contents of a lawfully impounded automobile[2]—

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[1]"Like any rule of law that depends for its application upon the test of 'reasonableness,' the law of search and seizure cannot be applied with mathematical precision. . . . Modern courts find as much difficulty in ascertaining the reasonable search as our common law predecessors encountered in the search for the reasonable man." *United States v. Edwards,* 441 F. 2d 749, 751 (5th Cir. 1971).

[2]It has been suggested that the standard inventory examination is not truly a search in the Constitutional sense since the motivation for the examination is not to uncover incriminating evidence or contraband. See *People v. Sullivan,* 29 N.Y. 2d 69, 272 N.E. 2d 464, 468-69 (1971). Only when evidence

(This footnote is continued on next page)

there can be no question that the almost universally recognized need to inventory outweighs the minimal intrusion which the examination entailed.

A. The Well Recognized Need to Conduct Inventories of the Contents of Impounded Automobiles Is a Reasonable and Necessary Police Procedure.

The vast majority of courts which have ruled upon the question have concluded that the standard police inventory examination of the contents of lawfully impounded automobiles is a reasonable and necessary practice. *See State v. Achter,* ..... Mo. ....., 512 S.W. 2d 894 (1974); *City of St. Paul v. Myles,* 218 N.W. 2d 697 (Minn. 1974); *People v. Sullivan,* 29 N.Y. 2d 69, 323 N.Y.S. 2d 945, 272 N.E. 2d 464 (1971), reversing, 35 A.D. 2d 690, 315 N.Y.S. 2d 274 (1970); *State v. Raiford,* 7 Or. App. 302, 490 P. 2d 1036 (1971); *Cabbler v. Commonwealth,* 212 Va. 520, 184 S.E. 2d 781 (1971); *Warrix v. State,* 50 Wis. 2d 368, 184 N.W. 2d 189 (1971); *State v. Wallen,* 185 Neb. 44, 173 N.W. 2d 372 (1970); *Godbee v. State,* 224 So. 2d 441 (Fla. App. 1969); *State v. Criscola,* 21 Utah 2d 272, 444 P. 2d 517 (1968); *State v. Montague,* 73 Wash. 2d 381, 438 P. 2d 571 (1968); *St. Clair v. State,* 11 Md. App. 605, 232 A. 2d 565 (1967); *Heffley v. State,* 83 Nev. 100, 423 P. 2d 666 (1967); *People v. Trusty,* ..... Col. ....., 516 P. 2d 123 (1973); *People*

is inadvertently discovered during such an inventory (as was the contraband in the instant case) is the legality of the procedure question. There is a strong analogy here to the "plain view" cases, which have held that the inadvertent discovery of contraband or evidence falling into the view of an officer who is in a place he has a right to be does not constitute a search within the meaning of the Fourth Amendment. *See Ker v. California,* 374 U.S. 23, 43 (1963).

v. Willis, 46 Mich. App. 436, 208 N.W. 2d 204 (1973); *United States v. Pennington,* 441 F. 2d 249 (5th Cir. 1971), cert. denied 404 U.S. 854 (1971); *United States v. Fuller,* 433 F. 2d 533 (D.C. Cir. 1970); *United States v. Sifuentes,* 504 F. 2d 845 (4th Cir. 1974). The views of those courts can be summarized by a representative passage from the decision of the Minnesota Supreme Court in *City of St. Paul v. Myles,* 298 Minn. 298, 218 N.W. 2d 697, 699 (1974):

> "We hold that a standard police procedure of inventorying the contents in an impounded vehicle is reasonable and therefore not constitutionally improper if performed without a warrant. In reaching this conclusion, we note that the search was not a probing, exploratory search conducted solely for the purpose of discovering evidence of other crimes. On the contrary, this standard police procedure is conducted to protect the property of the owner of the vehicle from loss or theft during the period of impoundment. Such safeguards taken with the objective of guarding the owner's possessions in his absence are commendable. The procedure also should be a great help in preventing false claims of loss from being successfully pursued in situations similar to those present in this case."

The United States Court of Appeals for the Fifth Circuit has held that "the only reasonable method" for safeguarding valuables contained in a lawfully impounded vehicle is "to inventory the contents and take receipts from the person who is thereafter to be responsible." *United States v. Pennington,* 441 F. 2d 249, 252 (5th Cir. 1971).

Significantly, in two of the leading cases in which the courts have excluded evidence seized pursuant to inventory examinations, those courts have conceded the legitimate purpose of the standard inventory but have restricted the scope of the inventory to items falling into the plain view of the inventorying authorities. *See Opperman v. State,* 228 N.W. 2d 152, 158-59 (1975); *Mozzetti v. Superior Court,* 4 Cal. 3d 699, 707, 484 P. 2d 84, 89 (1971). Both the Supreme Court of South Dakota, in the instant case, and the California Supreme Court, in *Mozzetti, supra,* recognized the propriety of law enforcement officials taking note for inventory purposes of personal property in plain sight within the impounded vehicle. However, both courts rejected the claim that the inventory *into closed areas* within the vehicle was necessary for the protection of the police and of the owners of the vehicles. *Id. Amicus* submits that the rationales adopted by those two courts in restricting the inventories to items in plain view do not stand up to close scrutiny.

In *Mozzetti,* the Court refused to accept the premise that an inventory if items within closed areas inside an impounded vehicle was necessary for the benefit of the vehicle's owner. Referring to a long line of California lower court decisions in which evidence found during standard police inventories was held admissible in criminal proceedings, the Court reasoned that "there is little doubt that all of them [owners of the impounded vehicles] would have preferred, for the protection of their property, that the police simply lock the doors, rather than search the contents of their cars." 484 P. 2d at 89.

The fallacy in the Court's reasoning is obvious. The reasonableness of the inventory procedure cannot

seriously be gauged by referring to the retrospective judgment of a group which was effectively prosecuted with evidence discovered by virtue of that procedure. The question is whether the search was reasonable under all the circumstances (*Preston v. United States,* 376 U.S. 364, 367 (1964)), not whether persons inadvertently apprehended as a result of the procedure would have approved of it.

The *Mozzetti* court also rejected the contention that a police inventory into closed areas of the impounded vehicle was necessary to protect the police and the storage bailee from tort claims. Asserting that as involuntary bailees the police are held to only a "slight duty of care," the Court stated that, "In no case was an inventory of items not within plain sight essential to safeguard the contents or to fulfill a "slight duty of care." 484 P. 2d at 90. The reasoning of the California court was adopted by the Supreme Court of South Dakota in the instant case. *State v. Opperman,* 228 N.W. 2d 152, 159 (1975).

Amicus submits that this rationale for prohibiting the police inventory of items within closed compartments of an impounded vehicle is unconvincing. By recognizing the propriety of an inventory of those items within plain view in the interior of the car, the *Mozzetti* court implicitly recognized the realistic possibility that the vehicle could be broken into and those items stolen. Obviously, if the vehicle itself could be burglarized, it is equally possible that the glove compartment or console of the vehicle could be opened and valuables removed. Under these circumstances, to contend that the inventory of items in plain view is more reasonable than an inventory of items within the glove compartment is not convincing. And if a failure to inventory items in plain view might amount to a breach of the "slight

duty of care," a similar failure to inventory items in closed areas would constitute an equivalent breach.

Moreover, the decisions in *Mozzetti* and *Opperman* fail to deal with the issue of false claims. A false claim would certainly not be restricted only to those items in plain view within the interior of the vehicle, but could equally as well relate to items alleged to have been contained within the closed compartments of the car. The only reasonable way for the police to protect themselves from such false claims is for them to inventory all items with the vehicle, including any valuables contained within closed compartments. This protective view was adopted by the Minnesota Supreme Court:

> "The police could be held responsible if valuables in a car under their control were stolen. Removal of these valuables for storage in the police property room removes most of this risk. In addition, an inventory, while not a guarantee against untimely claims of loss, is evidence the police can use to establish that a claim is false." *City of St. Paul v. Myles, supra,* 218 N.W. 2d at 701.

The scope of a warrantless search must be commensurate with the rationale that excepts the search from the warrant requirement. *Cupp v. Murphy,* 412 U.S. 291, 295 (1972). The purpose of the inventory examination is to protect the property with the motor vehicle for both the owner of the vehicle and for the police as involuntary bailees. This rationale would certainly include all valuables with the vehicle, including those

items which might be contained within closed compartments.[8]

Finally, this Court has itself recognized the necessity of police impoundment examinations. In *Cooper v. California,* 386 U.S. 58 (1967), Cooper had been arrested for a narcotics violation and his vehicle impounded pursuant to a California statute which authorized the seizure of any vehicle used unlawfully to transport narcotics. The vehicle was subsequently inventoried and incriminating evidence was found. This Court reasoned that,

> "The forfeiture of petitioner's car did not take place until over four months after it was lawfully seized. It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it." *Id.* at 61-62.

The reference to "protection" in the above passage can have two possible interpretations. First, it can refer to the physical safety of the officers, as where the vehicle might contain explosives or other dangerous instrumentalities. Secondly, it can refer to the protection

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[8]This rule would aid in assuring that a lawful inventory examination could not be used as a mere subterfuge for a prohibited exploratory search. A search beneath the vehicle's floorboards, for example, would almost certainly be incommensurate with the purposes of the standard inventory. The question of whether an inventory was being used as a mere pretext should, in each case, be left to the factual determination of the trial court and, if the court finds that the inventory was a subterfuge for illegality, the evidence seized should be excluded. See *St. Clair v. State,* 1 Md. App. 605, 232 A. 2d 565, 573 (1967).

of the officers from false tort claims being submitted by the owner of the vehicle. In either case, the rationale is equally applicable to the standard inventory conducted in the case at bar. It is clear that the safety rationale adopted in *Cooper* was not restricted to items within plain view since the incriminating evidence in *Cooper* was retrieved from the glove compartment of the vehicle. Nor does the four-month period of custody effectively distinguish the situation in *Cooper* from that in the instant case since there was no way to predict how long the police would retain respondent's illegally parked vehicle before he decided to claim it.

In sum, *amicus* State of California submits that the legitimacy of the need for police inventory examinations of impounded vehicles has been recognized by this Court, by the majority of state courts which have considered the question, and even by the Supreme Courts of South Dakota and California, although the latter two courts have irrationally restricted inventories to items in plain view within the vehicle. Insofar as the valid need to inventory exists, that need is as applicable to items contained in the glove compartment, console, or other closed areas where valuables are customarily kept as it is to items in plain view.

B. The Invasive Character of an Inventory Search of an Impounded Motor Vehicle Is Minimal in Nature Because of the Lesser Expectation of Privacy and the Benign Nature of the Search.

Prior to *Katz v. United States*, 389 U.S. 347 (1967), the search and seizure decisions of this Court focused on whether the location searched was a "constitutionally protected area." *See, e.g., Berger v. New York*,

388 U.S. 41, 57, 59 (1967); *Lopez v. United States*, 373 U.S. 427, 438-39 (1963); *Silverman v. United States*, 365 U.S. 505, 510, 512 (1961). In *Katz*, this Court rejected this prior analysis and stated,

> ". . . The correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase 'constitutionally protected area'. . . .
>
> "[O]nce it is recognized that the Fourth Amendment protects people—and not simply areas—against unreasonable searches and seizures, it becomes clear that the breach of that amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure." 389 U.S. at 350, 353.

The concurring opinion of Mr. Justice Harlan in *Katz* has served to specifically express the view that search and seizure questions under the Fourth Amendment will be resolved by an individual's "reasonable expectation of privacy." *Id.* at 360. His concurring opinion explains this phrase in these terms:

> ". . . My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited." *Id.* at 361.

Justice Harlan's test of "reasonable expectations of privacy" has since been adopted by the majority of this Court in several subsequent decisions. *Terry v. Ohio,* 393 U.S. 1, 9 (1968); *Alderman v. United States,* 394 U.S. 165, 179, n.11 (1969).

Amicus submits that the "reasonable expectation of privacy" that an individual has to his automobile and the enclosed area of that automobile (*i.e.,* glove compartment, console) is, by virtue of conditions of modern life, minimal in nature.

It has been suggested that three factors should be considered in determining whether persons claiming Fourth Amendment protection haver a reasonable expectation of privacy warranting such protection. The three factors are, (1) the nature of the intended area of private control, (2) the defendant's right to exclusive use of that area or facility, and (3) the degree to which society honors the intimacy or privacy of the activity normally carried on in such a place. *See* Note, From Private Places to Personal Privacy: A Post-*Katz* Study of Fourth Amendment Protection, 43 N.Y.U. L. Review 968, 983-84 (1968). When this three-pronged test is applied to the automobile console-glove compartment examined in the instant case, it is clear that the expectation of privacy is relatively negligible.

In determining the "nature of the intended area of private control," an enclosed area must, by necessity, take on the many of characteristics of its surroundings. A desk drawer located in a desk within a home would clearly enjoy the Fourth Amendment protections which had been afforded a home, protections which might very well not be afforded a desk drawer in a desk abandoned on the street. Likewise, the enclosed areas

within a motor vehicle must take on the characteristics of that vehicle. There is no question but that an automobile enjoys a lesser expectation of a privacy than a home. As stated by Mr. Justice Blackmun in *Cardwell v. Lewis,* 417 U.S. 583,

> "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the depository of personal effects." *Id.* at 590.

The second prong in the above-mentioned test of reasonable expectation of privacy is whether the claimant had a right to exclusive use of the area searched or the things seized. It is arguable that closed areas within a motor vehicle are subject to the exclusive use of the driver or owner of that vehicle. However,

> ". . . One must reasonably anticipate under certain circumstances third persons may invade his privacy to some extent." *People v. Krivda,* 5 Cal. 3d 357, 367, 486 P. 2d 1262, 1269 (1971).

Amicus submits that one should reasonably anticipate that closed areas within a motor vehicle might, considering the realities of modern life, he invaded under certain circumstances. The reason for such an expectation was cogently stated by Mr. Justice Rhenquist for the Court in *Cady v. Dombrowski,* 413 U.S. 433 (1973):

> "Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police—citizen contact involving automobiles will be substantially greater than police—citizen contact in a home or office. Some

such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidencer relating to the violation of a criminal state." *Id.*, 413 U.S. at 441.

This frequent contact between motor vehicles and police officers readily suggests several circumstances in which enclosed areas within a motor vehicle might be invaded. Such circumstances would include a vehicular accident, where officers enter into a glove compartment or console of that vehicle for information that would assist them in securing medical aid for a driver. Another situation is where the driver of a vehicle is arrested for a drug offense and, because of automobile forfeiture proceedings, the vehicle must be impounded with the concomitant inventory search of that vehicle into its enclosed areas. *See Cooper v. California, supra,* 386 U.S. 58 (1967). A third situation, such as occurred in the case at bar, is when a driver neglects his vehicle in violation of municipal parking ordinances and that vehicle is impounded and subsequently inventoried. These situations are commonplace realities of modern life and would suggest to any reasonable person that the enclosed areas of his motor vehicle might be invaded. Consequently, the operator of a motor vehicle does not enjoy the same expectation of privacy and exclusive use of the enclosed

areas of a motor vehicle that would be attendant with regard to the enclosed area of his home.

The third prong of the test is "the degree to which society honors the intimacy or privacy of the activity normally carried in such a place." *Note, supra,* 43 N.Y.U.L. Rev. at 984. Since virtualy every governmental action interferes with personal privacy to some degree, the question in each is whether that interference violates a command of the United States Constitution. *Katz v. United States, supra,* 389 U.S. 350 n.5. For this reason, it is necessary that ". . . the individual's otherwise reasonable expectation of privacy be buttressed by social norms; the intended walls of privacy must have some objective validity." Note, *supra,* 43 N.Y.U.L. Rev. at 984.

Amicus submits that the society is not prepared to recognize one's unequivocal expectation of privacy with regard to the enclosed areas within a motor vehicle. This proposition is clearly supported by the language in *Cardwell v. Lewis, supra,* 417 U.S. 583 (1973), wherein this Court recognized that the motor vehicle seldom serves as a repository of peersonal effects. *Id.*, 417 U.S. at 590. Since a motor vehicle is not a normal repository of personal effects, it seems unlikely that society recognizes an unequivocal expectation of privacy as to the enclosed areas of a motor vehicle. Presumably, it is because of the very real possibility of invasion that people refuse to entrust their personal effects to these areas.

The majority of courts that have considered the issue of whether warrantless inventory searches of impounded automobiles is reasonable under the Fourth Amendment have clearly recognized the distinction be-

tween homes and automobiles and, implicitly, the notion that one has a lesser expectation of privacy as to a motor vehicle, including the enclosed areas of that vehicle. *See City of St. Paul v. Myles,* 218 N.W. 2d 697 (Minn. 1974); *People v. Sullivan,* 29 N.Y. 2d 69, 323 N.Y.S. 2d 945, 272 N.E. 2d 464 (1971), *reversing,* 35 A.D. 2d 690, 315 N.Y.S. 2d 274 (1970); *State v. Montague,* 73 Wash. 2d 381, 438 P. 2d 571 (1968); *Heffley v. State,* 83 Nev. 100, 423 P. 2d 666 (1967).

Furthermore, one has an even lesser expectation of privacy in the circumstances presented in the case at bar, where respondent neglected his motor vehicle to the extent that that vehicle was subject to impoundment for violation of municipal parking ordinances. Such neglect can be considered as approaching abandonment of the vehicle and the contents therein. This concept was explored by the New York Court of Appeals in *People v. Sullivan,* 29 N.Y. 2d 69, 272 N.E. 2d 464, where the court stated:

> "A motor vehicle has been afforded some of the protections against 'unreasonable' searches that traditionally were allowed to a man's home. Yet the vehicle is still a chattel. Given its high mobility it may be left by the owner in places where its presence conflicts with public and private rights of others; and what may be done with it by public authority depends ultimately on a balancing of conflicting community and personal interests.
>
> "When a man willfully leaves a car unattended under a 'tow-away' sign through a time and at a place where all parking is prohibited, and in a city where removal of vehicles for the safety of streets is so widespread and so thoroughly publicized as in New York City, he is not far from risking its abandonment to removal, or indeed from an open invitation to authorities to remove it." 272 N.E. 2d at 465 (emphasis added).

The proposition that neglect of a vehicle is tantamount to abandonment was recognized by this Court in *Cady v. Dombrowski,* 413 U.S. 433 (1972). In that case the Court noted that,

> "These officers in a rural area were simply reacting to the effect of an accident—one of the recurring practical situations that result from the operation of motor vehicles and with which local police officers must deal every day. The Thunderbird was not parked adjacent to the dwelling place of the owner as in Coolidge v. New Hampshire, 403 U.S. 443 (1971), nor simply momentarily unoccupied on a street. Rather, like in *obviously abandoned vehicle* it represented a nuisance, and there is no suggestion in the record that the officer's action in exercising control over it by having it towed away was unwarranted either in terms of state law or sound police procedure." 413 U.S. at 446, 447 (Emphasis added).

The facts in the case at bar are similar to those in *Cady.* Like *Cady,* the towaway of Mr. Opperman's car was a recurring practical event that results from the operation of motor vehicles and with which local police officers in Ver Million must deal with every day. Also, like *Cady,* there is nothing in the record to suggest that this vehicle was parked adjacent to the dwelling place of the owner. Moreover, it is clear that the vehicle was not momentarily unoccupied on the street. The vehicle was first ticketed at 3

a.m. and again at 10 a.m. on the same day. Consequently, the motor vehicle in the case at bar represented, like the vehicle in *Cady*, a nuisance which was tantamount to an abandoned vehicle.

Moreover, the gravity of the invasion necessitated by an inventory examination of an impounded motor vehicle is minimized by the benign character of such a search. In *Cady, supra,* the Court observed that the distinction between motor vehicles and dwelling places leads to the conclusion that the "caretaking search" conducted in that case was not unreasonable solely because a warrant had not been obtained. 413 U.S. 433 at 447, 448. Discussing these community caretaking functions, the court noted that such functions are totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute. 413 U.S. at 441. *Amicus* submits that an inventory examination is just such community caretaking function, which does not have as its motivation the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. Therefore, the benign character of the inventory is a factor which renders the intrusive character of the search minimal in nature and tips the scales toward the conclusion that the search was reasonable. *See* Note, "Warrantless Searches and Seizures of Automobiles," 87 Harv. L. Rev. 835, 850, 851 (1974).

Several courts that have considered the issue of the reasonableness of the standard inventory examination of impounded motor vehicles have placed considerable emphasis on the benign character of such a search. As pointed out in *People v. Sullivan,* 272 N.E. 2d 464:

> "It is manifest that in inspecting vehicles they take into their custody in the absence of drivers, the police are not seeking evidence of crime but are pursuing precautions which any bailee of personal property would be expected to take as a matter of reasonable care for the benefit of the absent owner of the vehicle and as a safeguard against claims of loss or damage which could be alleged against the city. . . .
>
> "No . . . direct nexus between an inspection and an intent to prosecute, directly related to the seizure, is shown. Here the impounding of the vehicle was undertaken without regard to any possible prosecution and physical custody was neither necessary nor useful in the parking violation itself. Its purpose was to promote public safety and to facilitate the flow of traffic. This was not then, an 'unreasonable' search." *Id.,* 272 N.E. 2d at 465, 469. *See also United States v. Gerlach,* 350 F. Supp. 180 (E.D. Mich. 1972); *State v. Montague,* 438 P. 2d 571; *City of St. Paul v. Myles,* 218 N.W. 2d 697 (Minn. 1974); *State v. Wallen,* 185 Neb. 44, 173 N.W. 2d 372 (1970); *Godbee v. State,* 224 So. 2d 441 (Fla. App. 1969); *St. Clair v. State,* 11 Md. App. 605, 232 A. 2d 565 (1967); *United States v. Fuller,* 277 F. Supp. 97, 100 (Dist. Ct. Dist. of Columbia 1967).

Indeed, the lack of a benign purpose has been held by some courts to be the only legitimate reason for invalidating a warrantless inventory search of an im-

pounded motor vehicle. *See Pigford v. United States,* 273 A. 2d 837, 839, 840 (1971).

It is clear that in the case at bar the purpose of the inventory search was benign. There was clearly no intent to circumvent warrant requirements. As stated in the dissenting opinion of Justice Wollman,

> "The officer who conducted the inspection and inventory testified that all vehicles taken to the impoundment lot are inventoried against the standard inventory sheet. This is done because in the past instances property has been stolen from locked cars in the impoundment lot. The officer testified that he had never seen defendant's vehicle before, that he did not know defendant, and that he had no reason to suspect that the automobile might contain drugs." *State v. Opperman,* 228 N.W. 2d 152, 159-60 (1975).

Amicus thus submits that the benign, non-exploratory character of inventory searches of impounded motor vehicles minimizes the gravity of the invasion involved in such a procedure. This factor, coupled with the minimal expectation of privacy one holds in an illegally parked automobile clearly suggest that the gravity of the invasion is itself minimal in nature.

Conclusion.

The need to conduct warrantless inventory searches of impounded vehicles, including the closed areas of the vehicle, is well recognized and legitimate. This need clearly outweighs the gravity of the invasion which such a procedure entails considering the minimal expectation of privacy involved with a motor vehicle and the benign, non-exploratory purpose of such a search. Consequently, *amicus curiae* State of California joins petitioner State of South Dakota in urging that the judgment of the South Dakota Supreme Court be reversed.

Respectfully submitted,

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